Belkin GGM.

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

047047

FILE: B-189712 DATE: JAN 5 1978

MATTER OF: Cancer Research Institute, Los Angeles - Change of Grantee

DIGEST: 1. Los Angeles County and University of Southern California (USC) jointly filed an application for construction of Cancer Hospital and Research Institute. Grant from National Cancer Institute (NCI) was approved for the Research Institute, which was to be operated by USC, while the Hospital was to be paid for and run by the County. Due to Federal accounting requirements, grant was issued solely to the County, which subsequently decided not to construct the Hospital. Should NCI determine that, as to the Research Institute, the original joint application and a revised application proposed by USC are comparable and that the need for the facility still exists, NCI may "replace" the County with USC as the grantee and charge the original appropriations, even though they otherwise would be considered to have lapsed. See Comp. Gen. cases cited.

2. Generally, when an original grantee cannot complete the work contemplated and an alternate grantee is designated subsequent to the expiration of the period of availability for obligation of the grant funds, award to the alternate must be treated as a new obligation and is not properly chargeable to the appropriation current at the time the original grant was made. An exception is authorized in instant case since (1) Los Angeles County and University of Southern California jointly filed application and grant was awarded by National Cancer Institute (NCI) solely to County only to comply with accounting requirements that there be only one grantee; (2) NCI has determined that the original need still exists; and (3) before using these funds, NCI will determine that the "replacement grant" will fill the same needs and purposes and be of the scope as the original application.

This decision is in response to a request from the Director of the National Institutes of Health (NIH), Department of Health, Education, and Welfare, for our opinion as to whether moneys obligated in fiscal year 1974 for construction of the proposed Los Angeles County - University of

California Cancer Hospital and Research Institute remain available for construction of just the Research Institute at the University of Southern California (USC), notwithstanding the fact that the period for obligation of the funds in question has expired.

The facts concerning this matter are as follows. In late 1972, Los Angeles County and USC submitted a joint application for a grant under section 409(b) of the Public Health Service Act, 42 U.S.C. § 286b(b) to cover a portion of the cost of constructing a single facility on County land to house both a hospital and a cancer research institute. In the application it was estimated that the total project would cost approximately $38 million with $12 million sought from the National Cancer Institute (NCI), a division of NIH, $6 million provided by USC, and the remaining $20 million provided by the County. The grant funds which would be provided by NCI together with moneys furnished by USC were intended to cover the research portion of the facility occupied by the Institute, while the County's portion was to have paid, in effect, for the nonresearch hospital component.

The application indicated that USC would be responsible for the Research Institute, which would be headed by a scientist from USC who was in charge of the Comprehensive Cancer Research and Demonstration Center. The head of the Institute would also serve as project director for construction of the entire facility. Moreover, the Institute would be staffed by USC investigators.

After the County/USC application was reviewed by NCI and was approved by the National Cancer Advisory Board, a grant was awarded in the amount of $6 million. However, notwithstanding the joint nature of the application, the award was made solely to the County because only one institution could be listed as grantee for accounting reasons. Subsequently, the full $12 million award was approved in April 1974. The moneys so obligated came from funds appropriated by Pub. L. No. 93-192, the Department of Health, Education, and Welfare Appropriation Act, 1974 and were available for obligation until June 30, 1975.

Although the grant had already been approved, construction was delayed because of problems related to the proposed site and the design of the facility. During this period costs escalated, until by January 1977 the County's share had risen to approximately $40 million, while the USC and NCI shares remained unchanged. The County officials had decided to include the County's obligation as part of a general bond issue that had to be approved by two-thirds of the County's voters. When the bond issue was voted on, the necessary two-thirds requirement was not reached and as a result the County became unable to carry on with its share of the overall construction project.

The sole issue presented to us is whether in these circumstances it would be legally permissible for NCI to approve a revised application to be submitted by USC in which USC would be substituted as grantee for the County, notwithstanding the fact that the period for obligation of these funds has expired. In this regard it should be pointed out that before a change of grantee would be approved by NCI, USC's revised application would receive a thorough review. After an initial review by the California State Department of Health the application will be evaluated by NCI staff aided by a team of consultants made up to the extent possible of the same individuals that reviewed the original application. The purpose of this review will be to determine that the new application fulfills the same needs and purposes and is of the same scope as the original application. It is the position of NIH that if the revised application is determined to so fulfill the same needs and purposes as the original application, the County's withdrawal should not prevent the Research Institute from being constructed with the funds originally obligated for this purpose. In this regard, the Director states in pertinent part as follows:

> "Assuming the original and revised applications are found to be comparable, it would be our view that issuance of an award to USC would just constitute a technical shift of the grantee designation from the County to USC. As first submitted the original application was both from the County and USC and only because of Federal accounting requirements was the original grant made only to the County. USC was responsible for that portion (the research institute) of the first proposal which will be encompassed by the revised application. The original need for the research institute continues to exist."

As a general rule, when a recipient of an original grant is unable to implement his grant as originally contemplated, and an alternate grantee is designated subsequent to the expiration of the period of availability for obligation of the grant funds, the award to the alternate grantee must be treated as a new obligation and is not properly chargeable to the appropriation current at the time the original grant was made. See B-184031(5), June 25, 1976. As that opinion states, this result follows pursuant to section 1311 of the Supplemental Appropriation Act, 1955, 31 U.S.C. § 200.

Thus, in B-114876, January 21, 1960, we considered the question of whether an alternate grantee designated to replace the original grantee, who became unable to implement the grant, could receive the award from the appropriation current at the time the original grant was approved or whether the appropriation current at the time the grant was made

to the alternate is available. In our decision we advised the State Department that the award to the alternate grantee had to be recorded as an obligation against the appropriation current at the time the grant to the alternate grantee was executed. We explained our decision as follows:

> "The awards here involved are made to individuals based upon their personal qualifications. Whether the award is considered an agreement or a grant, it is a personal undertaking and where an alternate grantee is substituted for the original recipient, there is created an entirely new and separate undertaking. The alternate grantee is entitled to the award in his own right under the new agreement or grant and not on behalf of, on account of, or as an agent of, the original grantee. It seems clear that the award to an alternate grantee is not a continuation of the agreement with, or grant to, the original grantee executed under a prior fiscal year appropriation, but is a new obligation."

However, our Office has recognized, in somewhat analogous circumstances exceptions to this general rule set forth above. Most significantly in B-157179, December 29, 1970, we advised the Attorney General that the unexpended balance of grant funds originally awarded to the University of Wisconsin could properly be used to engage Northwestern University in a new fiscal year to complete the unfinished project. Essentially, we took this position because the designated project director had transferred from the University of Wisconsin to Northwestern University and was viewed as the only person capable of completing the project. We also found that the original grant to the University of Wisconsin was made in response to a bona fide need then existing and that the need for completing the project continued to exist. Our decision in that case analogized the circumstances of that case to the situation involving replacement contracts concerning which we take the position that the funds obligated under a contract are, in the event of the contractor's default, available in a subsequent fiscal year "for the purpose of engaging another contractor to complete the unfinished work, provided a need for the work, supplies, or services existed at the time of execution of the original contract and that it continued to exist up to the time of execution of the replacement contract." See 34 Comp. Gen. 239 (1954).

A subsequent opinion to a Member of Congress, B-164031(5) June 25, 1976, supra, disapproved a proposed transfer of a loan guarantee and interest subsidy from the Fort Pierce Memorial Hospital in Fort Pierce, Florida, to the Mount Sinai Medical Center located in Miami, Florida,

after the expiration of the period of availability of the original fiscal year allotment from which the guarantee for the Fort Pierce Hospital had been made. Since the hospitals involved were located approximately 125 miles apart and served different communities, we concluded that the transfer to Mount Sinai would not be a "replacement" in the sense of a continuation of the original guarantee and subsidy to Fort Pierce. The Miami project, we held, "must be viewed as a new and separate undertaking. * * * "

Although we disapproved the proposal involved in that case for the reasons stated above, we acknowledged that "it may be possible in certain situations to make an award to an alternate grantee after expiration of the period of availability for obligation where the alternate award amounts to a 'replacement grant' and is substantially identical in scope and purpose to the original grant."

We believe that the present case is a clear example of just the type of situation contemplated in that decision where the alternate proposal amounts to a replacement grant rather than a new and separate undertaking. First, the purpose of the instant grant appears to be the same as the original grant, i.e., to construct a cancer research facility in the Los Angeles County area. Although the original facility that would have been constructed would also have included a hospital, it is clear that the $12 million grant from NCI was intended, together with the $6 million to be provided by USC, to cover the cost of constructing the research portion of the facility. The non-research hospital component, which will not now be built, was to be financed entirely with County funds. Also, since the research facility will be constructed at essentially the same location as originally planned, albeit on land owned by the University rather than the County located no more than several hundred yards away from the original site, it will obviously serve precisely the same area that would have been served by the originally proposed facility. Furthermore, as indicated in the submission as well as the site visit report, the original strong need for the facility in the Los Angeles County area continues to exist.

Moreover, and perhaps most significantly, the original application that was submitted in 1972 was filed jointly by both Los Angeles County and USC. The application indicated that the University would be responsible for the research institution which would be headed by a scientist from USC who would also serve as project director for the entire facility, and would be staffed by USC investigators. In fact, as noted above, only because of Federal accounting requirements was the original grant made only to the County. Had both the County and USC been named as grantees, the problem with which we are now faced might have been resolved by a

simple amendment of the approved grant application. See B-74254, September 3, 1969. The Director states that it is NIH's view that if the proposals are comparable, "issuance of an award to USC would just constitute a technical shift of the grantee designation from the County to USC." In this regard it should again be pointed out that NCI will, prior to deciding whether to make this award to USC, carefully review USC's application to assure itself that the two applications fulfill the same needs and purposes and are of the same scope.

Accordingly, should NCI ultimately decide that the original and revised applications are comparable and that the need still exists, we would have no objection to its approving the change in grantee from Los Angeles County to USC and charging the award to the original appropriation.

Paul G. Dembling

For the Comptroller General
of the United States